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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/680,798	10/06/2000	Alain Benayoun	FR9-1999-0035 US1	2906

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EXAMINER

KUMAR, UTTAM

ART UNIT	PAPER NUMBER
2157	5

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/680,798

Applicant(s)

BENAYOUN ET AL.

Examiner

Uttam Kumar

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☒ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_                      6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C 112, first paragraph, as failing to adequately teach how to make and/or use the invention. The specification is enabling for a portion of the subject matter claimed but the enablement is not commensurate in scope with the claim. Specifically, the specification fails to show how the single step of "distributing..." of claim 1 can perform the claimed functions. Thus, it would require undue experimentation for a person having ordinary skill in the pertinent art to make and use the invention as disclosed and claimed.

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, for the reasons set forth in the objection the specification. Single means claim 1 is subject to an undue breadth rejection. See *In re Hyatt* 218 USPQ 195 (CAFC 1983).

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. The claimed language/step of "distributing..." is not entirely clear for the reasons mentioned above.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

7. Claims 1-5, 7-10 and 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Swales (U.S. 6,321,272).

8. As to claim 1, Swales discloses an apparatus for controlling internetwork communications that teaches a device for transferring data between two workstations

connected to a network, characterized in that it comprises means for distributing said data among a plurality of links of said network (column 2, lines 46-48). A TCP/IP router performs all the functions described by the claim.

9. As to claims 2 and 3, Swales teaches that the device comprises memory for storing data and that this memory is a dual port memory (column 3, lines 63-64).

10. As to claims 4, 9 and 14, Swales teaches:

- High-speed interface for transmitting data from a workstation or a link to memory (column 5, lines 47-55). The PLC, in this case, is a programmable logic unit acting as a router.
- A low speed interface for transmitting a part of said data from said memory to a link or a workstation (column 5, lines 47-55).
- Controlling the data flow between a workstation and a plurality of links by controlling the memory and the interface (column 11, lines 28-65).

As to claims 5 and 10, Swales teaches that the high-speed interface receiving data at an initial rate equal to the sum of the rates at which low speed interfaces transmit on the network (column 14, lines 35-44). The delays mentioned in the cited paragraph are an indication of rate of data transfer.

As to claims 7, 8, 12 and 13, Swales teaches an interface comprises means for establishing a connection with a modem and an interface comprises means for transferring data with a modem (column 3 line 56-column 4 line 7). The paragraph talks about interfacing with the Internet, and does not limit the type connection. A modem is a means of connecting a PC to the Internet.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 6 and 11 are rejected under 35 U.S.C. 103(a) as being obvious over Swales (U.S. 6,321,272) in view of Zikan et al (U.S. 6,310,881).

13. Swales teaches all the limitations of claims 5 and 10 as stated above. Swales does not teach the method claimed in claims 6 and 11 to distribute data among the several interfaces.

14. Zikan et al discloses a method and apparatus for network control that teaches cyclically distributing data between several interfaces (column 2, lines 33-59).

15. It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate Zikan's data flow distribution method into Swales' device. The motivation would be to more efficiently distribute the workload between the links, thereby producing faster data flow.

***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. 6,560,233 Hatanaka et al.

***Data Processing Apparatus and Network Relaying Apparatus***


This patent describes a network and data transfer similar to applicant's invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uttam Kumar whose telephone number is 703-305-0719. The examiner can normally be reached on M-Th 7:30-5; Every other Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 703-308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-305-3719.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Uttam Kumar  
Art Unit 2157  
November 14, 2003

  
ARIO ETIENNE  
SUPERVISORY PATENT EXAMINER  
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